Supreme Court, U. S.
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NO. 79-2007

in the
Supreme Court
of the
United States

OCTOBER TERM, 1980

BILLY J. WILLIAMS,

Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT 145, AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEORSPACE WORKERS, LOCAL LODGE 368, AND NATIONAL AIRLINES, INC.,

Respondents.

BRIEF OF UNION RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THE DECEMBER 10, 1973 AGREEMENT AND RELEASE WHICH SOUGHT TO SETTLE DISPUTED CLAIMS IS A VALID AND BINDING AGREEMENT IN THAT:

(a) THE PETITIONER ENTERED INTO THE AGREEMENT FREELY AND VOLUNTARILY WITH FULL AND COMPLETE UNDERSTANDING OF THE LEGAL EFFECT OF ALL ITS TERMS INCLUDING THE WAIVING OF HIS RIGHTS OF ACTION AGAINST RESPONDENTS.

(b) THE TERMS OF THE AGREEMENT WERE DUTIFULLY PERFORMED BY ALL RESPONDENTS.

(c) THE PETITIONER ACCEPTED ALL THE BENEFITS CONFERRED UPON HIM BY THE AGREEMENT INCLUDING PROMPT EMPLOYMENT AND ARBITRATION OF HIS DISPUTE CONCERNING HIS SENIORITY.

(d) PETITIONER DID NOT COMPLAIN OF THE LEGALITY OF ANY OF THE TERMS OF THE AGREEMENT UNTIL THE RENDITION OF AN ADVERSE RULING BY AN ARBITER CONCERNING THE QUESTION OF HIS

SENIORITY AND DID NOT FILE THE INSTANT ACTION UNTIL NINETEEN MONTHS AFTER THE EXECUTION OF THE AGREEMENT AND RELEASE.

2. WHETHER THE PLAINTIFF WAS AFFORDED DUE PROCESS AT THE ARBITRATION HEARING IN THAT HE WAS GIVEN NOTICE OF ALL MATTERS TO BE RESOLVED, WAS AFFORDED FULL AND COMPLETE OPPORTUNITY TO BE HEARD AND HIS CHOSEN REPRESENTATIVE PRESENTED HIS POSITION IN A GOOD FAITH, NON-ARBITRARY, NON-DISCRIMINATORY MANNER.

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STATUTES INVOLVED

Title 45, §151(a) of the United States Code:

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Title 45, §152 First of the United States Code:

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Title 45, §152 Second of the United States Code:

> Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

COUNTERSTATEMENT OF THE CASE

The Respondents, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT 145, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 368, (hereinafter Union Defendants or IAM) cannot accept Petitioner's Statement of the Case. The decision of the United States District Court, affirmed *per curiam* by the United States Court of Appeals for the Fifth Circuit, turned upon the specific facts involved in the case. These facts, to a great extent, were not contained in the Petitioner's Statement of the Case. Accordingly, the IAM is compelled to set forth these facts in its Counterstatement of the Case.

The Petitioner was hired into the mechanics classification by National Airlines, Inc. (hereinafter NAL) on June 23, 1969. At all times material to the

Complaint, the IAM was the exclusive bargaining representative of the class and craft of which the Petitioner was a member. On November 2nd, 1970 the Petitioner was furloughed by NAL because of a reduction in force. Shortly thereafter, while on layoff status, the Petitioner, rather than forsake all ties with the Union due to his non-employee status, elected to cease to become a member by honorary withdrawal from the Union.

On or about the beginning of August 1971, while on layoff status by NAL, the Petitioner was notified by letter from NAL, that he was to contact NAL with respect to the possibility of returning to work. However, prior to contacting NAL, Petitioner was informed by telegram that the possible recall was cancelled. In the interim representatives of IAM conferred with NAL concerning the possible recall. The decision not to recall was made solely by NAL based on legitimate business reasons after evaluating statements and representations at the meetings.[1]

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[1]The events surrounding the cancellation of the recall were not specifically at issue at trial as the Court, in view of the terms of the December 10th, 1973 Agreement and Release in which, *inter alia,* Petitioner waived and relinquished

> ". . . any and all other claims, monetary or otherwise, causes of action, damages, demands, obligations and liabilities of any nature whatsoever against NAL and the IAM that emanate or may emanate from his furlough in 1970; his recall and cancellation of recall in 1971; and alleged failure of duties to represent.",

and, after reviewing the Complaint and respective trial memoranda, ruled that the Agreement and Release resolved the August 1971 recall issue.

On or about September 1971, NAL promoted certain employees into the mechanics classification. The Petitioner, although on layoff status, had knowledge of the promotions but did not invoke the mandatory grievance procedure provided for in the Collective Bargaining Agreement. Instead, he elected to remedy the problem himself by writing a letter to NAL without notifying the Union as to his problem.

In March 1972, the Union Defendants, having finally been informed of Petitioner's complaint in February after transmittal of the above letter, scheduled a meeting between the Union, NAL and the Petitioner. The meeting was not a formal step of the grievance procedure as the Petitioner never invoked that procedure and it was not available to the Union by virtue of Petitioner's failure to invoke the grievance procedure. At that meeting, NAL took the position that the promotions in question were proper and no further action was taken.

Starting in the summer of 1973, the Petitioner wrote several letters to IAM officials and representatives. The Petitioner's letters finally showed a concern with alleged September 1971 illegal promotions which the Petitioner had not grieved. Through the voluntary efforts of the Union Defendants and their attorney, a meeting with NAL was arranged in an effort to aid the Petitioner in whatever way they could. These meetings were secured despite the fact that the grievance procedure was never invoked and the Petitioner's contractual 18 months right to be recalled had expired.

On December 10th, 1973, the Petitioner, IAM and NAL entered into an agreement. This Agreement and Release was entered into in an effort to resolve the alleged claims emanating from the Petitioner's November 1970 furlough; his possible recall and cancellation of that recall; failure of recall in 1971; seniority problems; and any alleged failures of a duty to fairly represent pursuant to the same. This agreement between the parties, while not admitting that the Petitioner's assertions were true and correct, did have the effect of resolving any and all present or future claims arising out of the aforementioned subject matters that the Petitioner may have had against either NAL or IAM. It provided that in consideration for Petitioner's employment, no probationary period, arbitration of his seniority — the complaint which he sought to lodge with NAL but had never properly done so — the Petitioner agreed to waive, relinquish and release NAL and IAM from all claims, causes of action, damages, demands, obligations and liabilities of any nature including duties of fair representation that emanated or may have emanated in the future, from his furlough in 1970, his recall and cancellation of recall in 1971 and his failure to be recalled in 1971.

The Agreement and Release was voluntarily entered into by the Petitioner without any threats or coercion of any kind. The Petitioner fully understood all of the terms of that Agreement and Release as the attorney for the Union Defendants fully explained to the Petitioner each and every portion of the Agreement including the fact that he was releasing NAL and the IAM from any prior claims which he may have had arising from others' promotions and cancellation of his

recall; that he was waiving backpay; and that the issue to be arbitrated was whether his seniority date would be June 23rd, 1969 or whether it would be December 10th, 1973. Moreover, he also explained to the Petitioner the options which he had with respect to either signing or not signing the Agreement and Release. He explained that the Petitioner had a right to sue the Company and the IAM in federal court, and that he should discuss the Agreement and Release with outside legal counsel. This the Petitioner did with two different persons, one a labor attorney in Miami and another labor relations consultant in New Jersey. On December 10th, 1973 the Petitioner signed the Agreement and Release after thoroughly understanding each and every provision of that Agreement and Release and after examining all his options with the aid of independent outside legal assistance.

Approximately two months thereafter pursuant to the aforementioned Agreement and Release, the Petitioner's seniority issue was presented before a neutral arbitrator. The Union attorney, Joseph P. Manners, chosen by the Petitioner, and the Petitioner prepared the presentation together for eight to ten hours. During the preparation all the evidence which was to be presented was outlined. The attorney and the Petitioner duly discussed, on a number of occasions, all the evidence including the fact that the attorney believed that the alleged 1971 cancellation of possible recall was immaterial. At the hearing, all the outlined evidence was presented together with other facts developed by NAL and/or the Petitioner. In addition, the Petitioner was given the opportunity to present any arguments which he desired and he did so, including the alleged cancellation of the possible recall in August 1971.

On March 19th, 1974, the arbitrator rendered his Award holding that the Petitioner's seniority date was December 10th, 1973.

On July 30th, 1975 some 16 months after the decision of the arbitrator, and some 19 months after the Petitioner had accepted all the benefits of that December 1973 Agreement including employment, the Petitioner filed his instant action. The cause proceeded to trial where Judge C. Clyde Atkins narrowed the issues to be litigated to the issue of the validity of the December 10th, 1973 Agreement and Release and the issue of fundamental fairness in the arbitration proceeding. The Court limited its inquiry to these two issues because the December 10th, 1973 Agreement and Release, by its very terms, constituted full and complete settlement of the Petitioner's claims arising out of the August 1971 cancellation of possible recall and the September 1971 alleged illegal promotions — the same claims for which the Petitioner was seeking relief in this case. After the Petitioner presented evidence concerning the arbitration and Agreement and Release issues, the Defendants, IAM and NAL moved for 41(b) Involuntary Dismissal and said motion was granted as to all Defendants. On appeal to the United States Court of Appeals for the Fifth Circuit, the judgment of the District Court was affirmed *per curiam* based upon the District Court's Findings of Fact and Conclusions of Law.

ARGUMENT

1. THIS PETITION PRESENTS NO IMPORTANT ISSUE WORTHY OF REVIEW BY THIS COURT.

The decision of the District Court affirmed *per curiam* by the Court of Appeals neither conflicts with that of other federal or state courts nor does it involve a departure from the accepted and usual course of judicial proceedings requiring this Court's exercise of its power of supervision. Further, it does not involve any important question of federal law which has not been, but should be, settled by this Court. Rather, the decision involves only the application of well established legal principles to the narrow and particular facts present in the case.

Accordingly, in view of the fact that the decision of the District Court, affirmed by the Court of Appeals, is confined to its own specific facts, it is thereby of importance only to the particular litigants involved and the Petition for Writ of Certiorari should be denied. See *National Labor Relations Board v. Pittsburgh Steamship Company,* 340 U.S. 498 (1951); *Magnum Import Co. v. Coty,* 262 U.S. 159 (1923); *Fields v. United States,* 205 U.S. 292 (1907).

2. THE DISTRICT COURT DECISION AFFIRMED PER CURIAM BY THE COURT OF APPEALS IS CORRECT IN THAT IT IS BASED UPON THE EVIDENCE ADDUCED AT TRIAL AND WELL ESTABLISHED LAW.

The decisions below involved a determination that the December 10, 1973 Agreement and Release resolving disputed claims was a valid and binding agreement and that the Petitioner was afforded due process at his arbitration hearing.

The December 10, 1973 Agreement and Release entered into by the Petitioner, the IAM and NAL represented a bona fide effort to resolve and/or settle all Petitioner's past disputed claims emanating from his November 1970 furlough; his possible recall and cancellation of that recall; failure of recall in 1971; seniority problems; and any alleged failures of a duty to represent pursuant to the aforesaid claims.[2] This Agreement was entered into pursuant to the Railway Labor Act, 45 U.S.C. §151, et seq., more specifically, 45 U.S.C. §151(a); 152 First and 152 Second. These sections of the Act specifically authorize and mandate that all disputes, whenever possible, be settled prior to resort to the courts. *Chicago & North Western Ry. Co. v. United Transp. Union,* 402 U.S. 570 (1971); *Kline v. Florida Airlines, Inc.,* 496 F.2d 919 (5th Cir. 1974).

Moreover, the Agreement and Release was voluntarily entered into by the Petitioner without any threats or coercion. The Petitioner, by his own testimony, understood each and every provision of the ~~Act~~ AGREEMENT, was explained all the options available to him, and

[2]The duty to fairly represent the Petitioner was waived and/or released only as to *past disputed claims* and in consideration of the bona fide settlement of these claims. It was not, in any way, waived as to *future* claims as is the case under the facts and circumstances present in *DeArroyo v. Sindicato De Trabajadores Packinghouse, AFL-CIO,* 425 F.2d 281 (1st Cir. 1970); *cert. denied,* 400 U.S. 877 (1970) cited by the Petitioner.

did consult outside legal counsel prior to executing the same. (See Counterstatement of the Case, supra.)[3]

Even assuming that the Agreement and Release is not enforceable as a matter of law, the Petitioner is estopped, as a matter of equity, from denying its existence. The Petitioner did not complain of the legality of the Agreement and Release until after the rendition of the adverse ruling by an arbiter concerning his seniority. Further, at that time, he had accepted all the benefits of the Agreement and Release, to-wit: immediate employment, expeditious arbitration of his seniority date, etc. Yet, he desired to re-litigate the same claims for which he had released the Respondents. The Petitioner's acceptance of the benefits in the Agreement, along with his failure to vigilantly protest the settlement agreement, warrants a denial of equitable means to set aside that Agreement and Release.

In addition to the propriety of the decision concerning the validity of the Agreement and Release the lower Courts' factual finding that the Petitioner was afforded due process at his arbitration hearing is also correct.

Ordinarily, awards rendered pursuant to arbitration hearings are entitled to great deference by the courts. The courts may not review these awards,

[3]The Petitioner's full and complete understanding of the terms of the Agreement and Release and his execution of the same after consultation with outside counsel, along with the absence of inducements and coercion, distinguishes this case from *Thompson v. Brotherhood of Sleeping Car Porters,* 316 F.2d 191 (4th Cir. 1963).

save allegations of corruption, fraud or other denials of due process. *Rosen v. Eastern Airlines, Inc.*, 400 F.2d 462 (5th Cir. 1968); *cert. denied*, 394 U.S. 959 (1969). Inherent in grievant's right to due process is his right to have his union represent him in a good faith, non-arbitrary, non-discriminatory manner. *Vaca v. Sipes*, 386 U.S. 171 (1967). This entails a union's presentation of the grievant's position in a manner consistent with fundamental fairness.

The Petitioner, pursuant to the Agreement and Release, was afforded an expeditious arbitration hearing concerning his seniority date. The hearing was a full and fair hearing wherein the Petitioner was given notice of all matters to be resolved and a full and complete opportunity to be heard. The Petitioner, along with his chosen representative, IAM Attorney Manners, prepared the case and outlined all the evidence to be presented. At the hearing all evidence was presented in a manner consistent with that outline. Further, the Petitioner was given an opportunity to testify and did testify on his own behalf at the hearing. At no time, either prior to or at the hearing did he raise any objection to any aspect of the hearing (see Counterstatement of the Case, supra).

The arbitration hearing was a full and fair hearing and the Petitioner's chosen representative presented his position in a manner consistent with fundamental fairness.

The decision of District Court applied well established legal principles to the particular facts and circumstances of the case. That decision was affirmed

per curiam by the Court of Appeals. Accordingly, the propriety of that decision is firmly established and certiorari review by this Court is not warranted.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that three copies of the foregoing Brief of Union Respondents in Opposition to Petition for Writ of Certiorari were mailed to: Roger D. Haagenson, Esquire, Attorney for Petitioner, Suite 601, Cumberland Building, 800 East Broward Boulevard, Fort Lauderdale, Florida, 33301; and to William B. Killian, Esquire, Attorney for National Airlines, Inc., 1400 Southeast First National Bank Building, Miami, Florida, 33131, on this 18th day of July, 1980.

MANNERS, AMOON,
WHATLEY & TUCKER

By: /s/ George H. Tucker
GEORGE H. TUCKER